themselves in the marketplace . . . [contrary to] both the broad general policies seeking greater participation by smaller companies in competing in the OSP market, and with the more specific policy the Commission must apply in terms of its RFA analysis."[141] Moreover, consideration of the several characteristics or rate elements in the Commission's benchmark proposal "is contrary to the industry's growing reliance on nationwide flat rates."[142] In addition, ACTA asserts that "the formula underlying the proposal will provide the benchmark carriers with the opportunity to engage in anti-competitive conduct and predatory pricing."[143] ACTA contends that the Commission's proposal ignores economic facts and "leaps to the assumption that the rates of the Big Three represent those rates that consumers would expect to pay for operator services . . . [and as such] is but a self-fulfilling prophecy."[144] ACTA argues that "[s]uch circuitous reasoning creates the antithesis of maintaining competition and of avoiding regulation which unduly and unfairly burdens small businesses."[145]

37. BA/BS/NYNEX argue that the Commission should not base benchmarks on what consumers pay the Big Three for a 1+ call because "these prices are lower than those same carriers' prices for 0+ calls and may bear no particular, predictable relationship to 0+ prices."[146] USOC and HCI both argue that the difference between the hospitality and payphone industries are different enough to warrant separate regulatory treatment by the Commission.[147] USOC contends that guest phones should be considered in the eligibility pool for payphone compensation or any implementation of benchmark rates should apply only to payphones.[148]

38. Opticom argues that the Commission has failed to provide support for the conclusion that consumers generally expect rate levels to be within a comparable range of rates charged by the three largest carriers.[149] Opticom further argues that even if such rates were reasonable, "the Commission has not proposed any safeguards to ensure that such rates remain

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141 Id.

142 Id. at 4.

143 Id.

144 Id. at 5 (footnote omitted).

145 Id.

146 BA/BS/NYNEX Comments at 10.

147 USOC Comments at 8; HCI Comments at 4-5.

148 USOC Comments at 3. Such compensation issues are beyond this proceeding, as well as our Payphone Compensation Order in CC Docket No. 96-128.

149 Opticom Comments at 8.

reasonable."[150] Opticom continues, stating that "[l]arge OSPs such as AT&T, MCI and Sprint have wide latitude in setting their rates due to their large market share and other service offerings. Consequently, these carriers could engage in predatory pricing by reducing the cost of calls so dramatically as to destroy the ability of other OSPs to compete in the marketplace."[151]

39. Oncor similarly contends that, "the proposal to base the rate 'benchmarks' on the rates of the three leading operator service providers -- all of whom are considered to be non-dominant -- would result in three companies whose rates are virtually unregulated becoming the de facto rate regulators of 500 other companies, the totality of which compromise a minuscule market share."[152] OSC asserts that "[a] benchmark rate must take into consideration the costs of providing service, yet no cost data has been provided to make this determination."[153] AT&T does not support the establishment of benchmark rates based upon the charges of any specific carrier or small group of carriers because such carriers' rates may not be reflective of the costs of other carriers.[154] Noting that because OSP rate structures vary, GTE contends that trying to force all to comply with a benchmark based on a fixed set of criteria could stifle innovative offerings.[155]

40. MCI, which continues to urge BPP as "the best way to protect the public, promote true competition in this market and end the need for a never-ending series of administrative proceedings," notes that "[s]o long as OSPs 'compete' to be the presubscribed carrier at a location by offering commission payments to premise owners, they may charge the calling public high rates in order to pay those commissions and profit . . . [and] aggregators will have the incentive to try to force consumers to use the presubscribed carrier to increase those payments."[156] Arguing that the proposed benchmark and disclosure rule is not needed in light of current rule Section 64.703(a)(3),[157] MCI contends that such a requirement "would significantly increase the burden on OSPs by requiring rate disclosure on all calls, even when consumers already know and accept the rates, without significantly improving the protection afforded consumers under the current

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150 Id.

151 Id.

152 Oncor Comments at ii-iii.

153 OSC Comments at 4.

154 See AT&T Comments at 2.

155 GTE Comments at 4.

156 MCI Comments at 2.

157 Section 64.703(a)(3) requires, inter alia, that each OSP disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of its rates or charges for the call.

rule.[158] MCI further contends that "[a]ll calls may have to be sent to a live operator, in the near term, in order to disclose the rates for a call . . . [and] estimates that it would cost an additional $0.40 per call to do this."[159]

41. Intellicall state that the use of benchmarking would not reduce the cost of complying with a Commission order because, "as a manufacturer, Intellicall must offer a product that could be used by all carriers, including those that wish to charge above benchmark rates" so that "every store-and-forward payphone it manufactured would have to have this capability (and absent grandfathering, all embedded equipment would need to be retrofitted, even if the buyer of the product intended to charge less than the benchmark rates."[160]

42. The Office of Management and Budget (OMB), in commenting on our benchmark proposal in OSP Reform Notice, states:

> There are some fundamental questions that the FCC must answer with this proposed rule and collection. First, how will consumers be informed what the benchmark is? Would the consumer be better served by requiring the OSP to inform the caller of the cost of the call, regardless of any benchmark? The FCC should also calculate and include, as a cost burden, the cost of installing the systems that will inform the consumer of the cost of call [sic] (or if the cost exceeds the benchmark.) It should not be assumed by the FCC that members of the public will know what a benchmark cost is. Their knowledge will, in general, be limited to the cost of services provided by their interlata carrier of choice.[161]

C. COMMENTS ON BILLED PARTY PREFERENCE

Commenters Opposed to Ending Consideration of BPP

43. Ameritech, in a manner similar to MCI and Sprint, expresses its regret that the Commission announced its tentative conclusion to not consider BPP at this time, and encourages the Commission to continue to consider the idea in the future.[162] Ameritech disagrees with the

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158 MCI Comments at 3.

159 Id. at 3-4.

160 Letter from Steven A. Augustino, counsel for Intellicall, to William F. Caton, Secretary, Federal Communications Commission, June 12, 1997, at 2.

161 Notice of Office of Management and Budget Action, No. 3060-070 (September 8, 1996).

162 Ameritech Comments at 1-2; MCI Comments at 2-3; Sprint Reply Comments at 2.

Commission, stating that it does not believe the deployment of Local Number Portability (LNP) will lessen the incremental cost of BPP.[163] It, nevertheless, continues to support BPP as the best long-run solution to customer satisfaction issues regarding calling card, collect, and third-number calling.[164] MCI argues that BPP will provide an incentive for OSPs to compete for consumers' business on the basis of cost and service quality, which MCI contends is the best way to protect the public, and promote true competition in the market.[165] Sprint agrees that adoption of BPP would make all OSPs compete for call traffic by offering high-quality services to consumers at the lowest possible price.[166]

44. NARUC and the California Commission express their continued support for the BPP concept and encourage the Commission to act expeditiously to determine if BPP implementation is justified in light of the costs and jurisdictional issues.[167] The California Commission agrees with the Commission's observation that if local exchange carriers (LECs) are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP may be less than customer benefits from BPP.[168] The NYCPB also supports the Commission's further consideration of BPP, especially as LNP develops, as the NYCPB shares California Commission's belief regarding lower incremental costs.[169]

Commenters In Favor of Ending Consideration of BPP

45. APCC, citing the opinions of many other parties, maintains that the record is "overwhelmingly" in favor of terminating consideration of BPP.[170] APCC states that of the LECs which previously supported BPP, all except one, now do not support BPP.[171] APCC notes that SWBT, which strongly supported BPP, now believes that the time for implementation of BPP has passed and that GTE, "another erstwhile diehard supporter, states that adoption of BPP has been

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163 Id.

164 Ameritech Comments 1-2.

165 MCI Comments at 2-3.

166 Sprint Comments at 3.

167 NARUC Comments at 1; California Commission Comments at 2.

168 California Commission Comments at 2.

169 NYCPB Comments at 7.

170 APCC Reply Comments at 9.

171 Id.

frustrated by high capital costs and resultant cost recovery impacts on OSP rates."[172] APCC further notes that Ameritech, the only LEC still declaring support for BPP, states unequivocally that deployment of LNP databases as required by the 1996 Act is not likely to lessen the incremental cost of BPP.[173] BA/BS/NYNEX similarly contend that the record illustrates that technology and the market have overtaken BPP, and accordingly, the Commission should terminate this proceeding.[174] Like APCC, they note that even SWBT, perhaps BPP's most ardent supporter, has concluded that "the time for BPP has come and gone and the issue should now be closed".[175] BA/BS/NYNEX state that "[t]here is no factual support in the comments for the Commission's suggestion that number portability will put BPP back in the running again, even from those who continue to support BPP as a long range option."[176] Finally, BA/BS/NYNEX state that U S WEST has demonstrated in detail why BPP cannot "piggyback" on number portability; and that Ameritech has also concluded that number portability is not likely to lessen the incremental cost of BPP.[177] U S WEST asserts that LNP does not provide an alternative solution because LNP databases will only exist in limited geographic areas.[178] As such, LECs will have to interconnect their Line Information Databases (LIDB) to the LNP database and consequently incur excessive costs for the investment in OSS7 switching and additional signaling capacity.[179]

46. Other parties urge the Commission to cease consideration of BPP. CCI argues that for several years, consumers have been assured of reaching their preferred long distance carrier at payphones as required by TOCSIA, which is the key benefit of BPP, through dial-around calling. CCI argues, therefore, that a need for BPP has been eliminated and implementation would impose extreme and unnecessary costs on the payphone industry.[180]

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172 Id.

173 Id. at 9-10.

174 BA/BS/NYNEX Comments at 11-12.

175 BA/BS/NYNEX Reply Comments at 4.

176 Id. (footnotes omitted).

177 Id. at 4 n.11,12.

178 US WEST Comments at 12-14.

179 Id.

180 CCI Comments at 3-4.

47. In addition to CompTel's assertion that the record establishes that BPP is not in the public interest,[181] other parties suggest that the costs of BPP implementation outweigh the benefits.[182] APCC argues that, based on the Commission's own assumptions, implementing BPP would cost $1.5 billion per year and would not produce benefits worth more than $221 million per year.[183] Intellicall and Teltrust state that they explicitly support the Commission's tentative conclusion that the "costs of implementing BPP significantly outweigh its purported benefits."[184] Intellicall continues, stating that imposing "the economic costs of BPP upon consumers would have substantially raised the rates for operator services, and substantially decreased the number of providers and the diversity of services."[185] NTCA agrees, specifically contending that the record has shown that industry-wide mandated BPP deployment is not economically feasible and would adversely affect small and rural LECs.[186] ACTA echoes the arguments of other parties in stating that it and many competitive IXCs, have argued that the costs of BPP substantially outweigh any potential benefit to customers.[187] Oncor, in accord with other parties, such as the Pennsylvania Commission and Peoples, cites numerous problems with BPP, including the extreme expense, and the inability of OSPs and LECs to implement the system in a manner which would result in categories of calls being routed to the billed parties' preferred carriers.[188] It is also claimed that BPP would have relatively little impact on the routing of interexchange calls because a majority of public phones are presubscribed to the same carrier that is the preferred carrier for a substantial majority of billed parties.[189] Oncor asserts that in light of the rapid proliferation

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[181] CompTel Comments at 20-23. (CompTel presents numerous arguments to support its belief that BPP is undesirable, including: (i) BPP would cost $2 billion or more to implement; (ii) BPP would make national dialing uniformity worse, not better; (iii) BPP would inconvenience callers by increasing call set-up times and requiring many callers to repeat information for two separate operators; (iv) BPP would alter the routing of fewer than 20 percent of all operator assisted calls; and (v) BPP would strand millions of dollars invested in "smart" payphone technology.) Id. at 21.

[182] Intellicall Comments at i; Opticom at Comments 1; NTCA Comments at 2.

[183] APCC Comments at 17-18.

[184] Intellicall Comments at i; Teltrust Reply Comments 1-2.

[185] Intellicall Comments at i; Teltrust Reply Comments 1-2.

[186] NTCA Reply Comments at 2.

[187] ACTA Initial Regulatory Flexibility Comments at 2.

[188] Oncor Comments at 2; NTCA Reply Comments at 1-2; GTE Reply Comments at 3. Pennsylvania Commission Comments at 2. (The Pennsylvania Commission, although recognizing the benefits of BPP in theory, concludes that "given the estimated $1 billion price tag to implement BPP, the costs of implementing BPP appear to greatly exceed the benefits at this time."), Peoples Reply Comments at 1-2. (Peoples states that the questionable effectiveness of the BPP scheme, coupled with its prohibitively expensive cost, prevent it from serving as an adequate mechanism to address operator services rate issues.)

[189] Oncor Comments at 2.

of dial-around calling by consumers to reach their preferred carriers, the implementation of TOCSIA, the Commission's regulations, and general consumer education, the need for BPP has dissipated.[190]

48. GTE and Intellicall assert that the "time has come to terminate further consideration of BPP" and that the Commission should "put billed party preference behind us."[191] Pacific Telesis expresses its agreement that, in light of changes that have taken place in the industry, BPP is not the appropriate solution "today that it may have been years ago."[192] USOC contends that the operator services industry has changed significantly since the original discussions on BPP, including increased dial-around traffic and competition in the industry and, as such, the Commission no longer need consider BPP.[193]

49. Certain parties, in their opposition to BPP, propose alternative pricing mechanisms. The Pennsylvania Commission supports the establishment of a modified ceiling on interstate domestic operator service rates in accord with the CompTel benchmark proposal, combined with the disclosure requirements outlined in the Attorneys General proposal.[194] GTE and SWBT propose that, in place of BPP, the Commission should allow market forces to operate for the protection of consumers and the elimination of unscrupulous carriers.[195]

50. The Attorneys General contend that, despite BPP's benefit of preventing OSPs from billing unsuspecting consumers at excessive rates, the BPP system's cost appears substantial and, the Attorneys General note, many reservations had been voiced against its adoption.[196] As such, the Attorneys General propose an alternative that would require OSPs to provide consumers with an oral disclosure, prior to connecting the call, warning of the potential for higher rates than charged by the consumer's regular carrier.[197]

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190 Id; see also Opticom Comments at 1-2.

191 GTE Reply Comments at 3; Intellicall Comments at i.

192 Pacific Telesis Comments at 1-2.

193 USOC Comments at 1, 5.

194 Pennsylvania Commission Comments at 2-3. The Pennsylvania Commission notes that while it supports the establishment of ceilings on interstate domestic operator service rates, it contends the CompTel Proposal requires significant modifications, such as: (i) establishment of rate ceilings more in line with underlying costs; (ii) establishment of more substantive OSP obligations; and (iii) placement of enforcement actions upon the OSP rather than the LEC or FCC.

195 GTE Reply Comments at 5; SWBT Comments at 5-6.

196 Attorneys General Comments at 2.

197 Id.

51. Other parties argue that deployment of LNP data bases will not result in development of network capabilities that will significantly reduce BPP implementation costs.[198] SWBT argues that LNP and BPP would use separate data bases and would require different network upgrades.[199] Thus, according to SWBT, LNP implementation will not aid BPP deployment. SWBT further contends that the time in which OSPs and LECs could have deployed BPP efficiently has passed and deployment of BPP would now take years, particularly if it is attempted as a retrofit into a number portability design.[200] GTE contends that information for BPP is provided through LIDB, and as such, may require an OSP to access the LNP database on every call.[201] GTE continues, stating that the LIDB is only designed for storage of information necessary to route the call to the terminating location, not to the preferred OSP. Thus, argues GTE, this factor, among other network costs, renders BPP prohibitively expensive.[202] Pacific Telesis supports this conclusion by cautioning that the database being developed for LNP could not accommodate the information necessary to perform the BPP function.[203] Pacific Telesis maintains its belief that BPP should not be required during implementation of LNP.[204]

52. NTCA reiterates its concern that, in implementing a solution to OSP pricing, no undue burdens are imposed on small and rural carriers in efforts to simplify access to the network.[205] NTCA urges the Commission to eliminate BPP as an alternative in addressing operator service rate issues in the payphone services marketplace.[206] NTCA further urges the Commission to reject BPP as an appropriate mechanism by which to induce more effective competition, lower prices and improved services for customers who prefer not to use access codes.[207]

53. The Ohio Commission agrees with the Commission's tentative conclusion that it would not be economical to institute BPP at the present time, since such a requirement would require the building of duplicate systems which would be capable of providing virtually identical

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198 GTE Reply Comments at 3; Pacific Telesis Comments at 2.

199 SWBT Comments 1-2; SWBT Reply Comments 3-4.

200 SWBT Comments at 1-2; SWBT Reply Comments 3-4.

201 GTE Reply Comments at 3.

202 Id. at 3-4.

203 Pacific Telesis Comments at 2, n. 1.

204 Pacific Telesis Reply Comments at 20.

205 NTCA Comments at 2-3.

206 Id.; NTCA Reply Comments at 2.

207 NTCA Reply Comments at 2.

functionalities.[208] The Ohio Commission, however, contends that the Commission should only defer its implementation of a BPP system until such time as number portability has been established.[209]

54. TRA echoes its previous comments before the Commission, arguing that immediate deployment of BPP will not result in an increase to consumer protection commensurate with the technical and financial burdens necessary to implement the system.[210] TRA does acknowledge its belief that the emergence of LNP may eventually lessen the costs of implementing BPP, but agrees with the Commission's tentative conclusion that, at the present, costs continue to outweigh the benefits BPP would provide consumers.[211]

55. APCC and CompTel assert that the lingering existence of the BPP docket continues to harm OSPs by making it more difficult for them to access capital and by increasing aggregator demands for accelerated commissions to recoup their investments.[212]

D. COMMENTS ON FORBEARANCE FROM APPLYING SECTION 226 TARIFF FILING REQUIREMENTS

Commenters Supporting Complete Detariffing

56. Oncor maintains that informational tariffs are not necessary to protect consumers against unfair or deceptive practices, or to ensure that consumers have the opportunity to make informed choices when placing a 0+ call from an aggregator location. Therefore, Oncor believes that the informational tariff requirement may be waived under Section 226, irrespective of Section 10(a) of the Act. Oncor maintains, however, that the Commission should not adopt rate benchmark proposals, which Oncor maintains are inconsistent with such waiver or forbearance.[213] Oncor further maintains that tariff forbearance for non-dominant carriers, both under Section 226 and Section 10 of the Act, will have many pro-competitive public interest benefits, and that the Commission should not sacrifice its ability to take that deregulatory step simply to implement an

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208 Ohio Commission Comments at 2.

209 Id. at 4-5.

210 TRA Comments at 2-3.

211 Id. at 3.

212 APCC Reply Comments at 9-10; CompTel Comments at 21-22. See Teltrust Reply Comments at 8 (It is difficult to raise capital when potential investors are informed that a pending regulatory proceeding "could have an extremely negative impact on your ability to compete.")

213 Oncor Comments at 16-18.

unnecessary and ill-advised rate benchmark/rate disclosure requirement for non-dominant carriers providing 0+ services.[214]

57. Opticom supports a complete detariffing policy with regard to informational tariffs, agreeing with the Commission's conclusion that such tariffs are ineffective because they cannot provide information at the time of purchase.[215] Instead, Opticom supports the Commission's alternative proposal of a mandatory price disclosure as the best long-term solution for protecting consumers, particularly transient callers making 0+ calls from aggregator locations.[216]

58. AT&T maintains that the Commission should apply the same tariff forbearance rules to its operator services as it applies to its other interstate services.[217] BA/BS/NYNEX believe that Section 10(a) of the Act requires the Commission to forbear from applying all OSP tariffing requirements, those imposed by both Section 203 and Section 226 of the Act, and that either an audible disclosure of charges before connecting the call or a certification that the OSP will not charge more than FCC-established benchmarks will be far more effective in ensuring reasonable rates and protecting consumers than a complete tariff filing requirement.[218]

59. Pacific Telesis maintains that tariffs will not, and can not, protect consumers at the point of purchase; that the benefits of such tariffs are outweighed by their costs; and that oral disclosure is a much better tool for ensuring consumer protection.[219] SWBT states that the one tool with which consumers may protect themselves, namely, access code dialing, already exists; and that informational tariffs will not aid consumers in determining whether to use a particular OSP because a consumer using a payphone does not have ready access to the tariffs.[220] SWBT asserts, however, that in a market as competitive as operator services, all OSPs must be regulated equally, so that complete detariffing of non-dominant OSPs, without detariffing all competitors, fails to meet the Commission's pro-competitive goals.[221]

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214 Id. at 18.

215 Opticom Comments at 10.

216 Id. at 10-11.

217 AT&T Comments at 5.

218 BA/BS/NYNEX Comments at 8-9.

219 Pacific Telesis Comments at 6-7; Reply Comments at 22-23.

220 SWBT Comments at 5; Reply Comments at 22-23.

221 SWBT Comments at 5-6.

60. The OCC supports forbearance with regard to the requirement to file informational tariffs "[b]ecause OSPs have misinformed consumers about the purpose of informational tariffs."[222]

Commenters Opposed to Complete Detariffing

61. The Telecommunications Subcommittee of the Consumer Protection Committee of the Attorneys General urge the Commission to maintain informational tariffing requirements for OSPs as a consumer protection measure and to ensure that OSP charges and practices are just and reasonable.[223] They recommend that OSP rates and charges, in addition to being available for public inspection at the FCC, also be accessible on line to the general public.[224] The California Commission strongly opposes forbearance of Section 226 tariff filing requirements applicable to nondominant interexchange OSPs. It believes that the filing requirement is an important safeguard that helps prevent arbitrary and discriminatory pricing, as well as an enforcement mechanism that may assist this Commission in determining whether an OSP's rates exceed its disclosure statement, or whether an OSP has violated or complied with FCC rules.[225] The Florida Commission does not support the use of forbearance authority to eliminate interstate tariff requirements because of possible repercussions at the state level.[226] If, however, the Commission should eliminate requirements for informational tariffs by non-dominant OSPs, the Florida Commission asserts that OSPs should be required to maintain, at their premises, price and service information and billing records at a designated location for inspection by regulators and consumers.[227] The Florida Commission further maintains that this information should be subject to a minimum retention period.[228] Similarly, the IPTA, which also urges that the Commission continue to require OSPs to file tariffs, states that "[i]t is important that all OSPs . . . be 'on record' somewhere of what rates they are charging for their services."[229]

62. ACTA does not support complete detariffing of any service offerings, including Section 203 tariffs. It contends that the rates of AT&T, MCI and Sprint should be published and readily available, given their tendency to act in their own vested interests, and further contends

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222 Summary of The Office of the Ohio Consumers' Counsel's Initial Comments (July 16, 1996) at 1.

223 Attorneys General Comments at 10-12.

224 Id. at 12.

225 California Commission Comments at 5.

226 Florida Commission Comments at 7. The Florida Commission states that the decision to use tariffs at the state level is based on "a somewhat different set of considerations than might apply at the federal level." Id. at 8.

227 Id. at 8-9.

228 Id. at 9.

229 IPTA Comments, received July 18, 1996, at 13.

that informational tariffs are the only means by which consumers, competitors and regulatory bodies have sufficient information about OSP rates being charged and to control unscrupulous operators that give inadequate or intentionally misleading price disclosures.[230] APCC contends that: it is premature to remove the tariff filing requirement, not only of Section 226 but also of Section 203; benchmarks could be used as a criterion for when carriers should be required to file Section 203 tariffs; such filings should be on sufficient notice to prevent new above-benchmark rate filings from taking effect before they were found to be just and reasonable; and either Section 203 or Section 226 tariffs would enable the Commission to identify OSPs with above-benchmark rates for purposes of checking compliance with disclosure requirements.[231] APCC recommends that the Commission retain Section 203 authority with respect to OSP tariffs, establish a longer notice period before above-benchmark rates could take effect, and require detailed cost support information to be filed in support of such rates.[232] CompTel submits that the Commission should permit the filing of informational tariffs and that such permissive detariffing should apply equally to all nondominant OSPs, regardless of the rates that they charge.[233]USOC takes the position that all OSPs should be required to file tariffs containing exact rates and rate plans in order to understand industry actuals and resolve consumer complaints.[234]

63. MCI maintains that, if the Commission determines that tariffs are not required to protect the public interest, there can be no justification for an informational tariff and the Commission should forbear from applying this requirement.[235] MCI further maintains, however, that the Commission should not require complete detariffing for interstate operator services for all the reasons presented in CC Docket No. 96-91.[236] Sprint believes that all OSPs should be required to file tariffs for 0+ calls from public phone and other aggregator locations; that the Commission should prohibit range-of-rate tariff filings and require OSPs to file their tariffs pursuant to Section 203 of the Act.[237] Sprint argues that competition in this segment of the market does not work to drive prices down but instead drives prices up in order to finance commissions to aggregators to gain the 0+ business.[238] Sprint maintains that tariffs are needed

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230 ACTA Comments at 8-9.

231 APCC Reply Comments at 8-9.

232 See APCC Comments at 11.

233 CompTel Comments at 23.

234 USOC Comments at 3.

235 MCI Comments at 5.

236 Id.

237 Sprint Comments at 8.

238 Id. at 9.

as a tripwire to enable the Commission to determine whether further investigation is necessary. Even if proposed benchmark/disclosure requirements are adopted, Sprint maintains that tariffs can have important consumer protection functions. For example, if a benchmark is based on an assumed average call length, Sprint states that an OSP could charge below-benchmark rates for that particular call length, so as not to have to disclose its rates to customers, but charge higher rates for calls of shorter or longer duration. Sprint further states that tariffs also perform a useful function for OSPs. Where there is no pre-established relationship between the carrier and the party paying for the call, Sprint maintains that a tariff is necessary to form a contract between the carrier and casual users of its services and to protect the carrier from unscrupulous consumers of its services. In any event, even if the Commission forbears from requiring OSP tariffs, Sprint finds no warrant for complete detariffing. According to Sprint, OSP competitors have every incentive to raise their rates, and whatever collusive effect the filing of tariffs may have in other market segments is totally absent here.[239]

64. GTE, which favors benchmark rate regulation directed against the limited number of abusing OSP carriers, contends that forbearance from OSP tariff filing requirements is inconsistent with such regulation and inappropriate at this time.[240] NTCA believes, as it did with respect to the Section 203 tariff filing requirement, that a decision not to rely on tariffs would be premature; but that any decision made in this docket should be consistent with that reached in CC Docket No. 96-61.[241]

E. COMMENTS ON PETITIONS FOR RECONSIDERATION OF THE PHASE I ORDER (0+ IN THE PUBLIC DOMAIN)

Petitions Seeking Reconsideration of the 1992 Phase I Order

65. CompTel, Polar Communications Corporation (Polar), LinkUSA Corporation (LinkUSA), Capital Network System, Inc. (CNS), and International Telecharge Incorporated (ITI) collectively contend that the Commission has acted arbitrarily, capriciously, and in contravention to the record which, according to these parties, supports the argument that AT&T's CIID card program causes competitive harm to the OSP industry.[242] CNS argues that the Commission

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239 Id. at 9-11.

240 GTE Comments at 9.

241 As previously noted at footnote 22 of this Order, the Commission determined that the statutory forbearance criteria in Section 10 of the Communications Act are met for it to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services.

242 CompTel Petition at 9; ITI Petition at 1,3; Polar Petition at 1; LinkUSA Comments at 2; CNS Reply to AT&T Opp. at 2-3. (ITI, Polar, and LinkUSA state their full support for CompTel's Petition for reconsideration).

"improperly and unlawfully failed to establish regulations that would eliminate [the] anticompetitive problems" posed by the CIID program.[243] ITI and Polar contend that the Commission failed to adequately assess the costs and benefits of the O+ public domain proposal.[244] Intellicall and LinkUSA express their support of CompTel's Petition for Reconsideration, and urge the Commission to adopt a 0+ public domain policy that requires AT&T to open its validation database to all carriers, or require AT&T to use its proprietary CIID card in conjunction with an access code.[245] Opticom also supports CompTel's position, but urges the Commission to further modify the proposal to require AT&T to open its CIID database to OSPs regardless of whether AT&T requires CIID customers to access its network through access codes.[246]

66. CompTel argues that although the Commission recognized that in 1992 AT&T accounted for the majority of OSP minutes,[247] it failed to adopt an effective solution. CompTel presents four points in support of its Petition: (i) the record before the Commission demonstrates that AT&T's introduction of its CIID card created competitive harms;[248] (ii) the Phase I Order concluded an "immediate competitive problem" existed due to the requirement by other OSP providers to devote their "facilities to uncompletable calls";[249] (iii) despite recognizing these harms, the Commission failed to act in accord with its findings and instead promised to consider BPP as a solution and examine a compensation mechanism for CIID calls misdirected to OSPs;[250] and (iv) the Commission's cost/benefit analysis of 0+ public domain was erroneous because it increased the costs of the proposal based upon AT&T's statement that it would require access codes for its cardholders.[251] CompTel ultimately argues that the Commission's Phase I Order failed to assess properly the relative costs and benefits of the 0+ public domain proposal because its failed to recognize the unique nature of the CIID card in the 0+ dialing environment.[252] CompTel concludes that AT&T's CIID card will continue to confuse callers as long as it is

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243 CNS Reply to AT&T Opp. at 2.

244 ITI Petition at 1,3; Polar Petition at 1.

245 Intellicall Comments, filed March 19, 1993, at 2; LinkUSA Comments, filed March 19, 1993, at 2.

246 Opticom Comments, filed March 22, 1995, at 5.

247 CompTel Petition at 6-7.

248 Id.

249 Id. at 9, 11-12.

250 Id. at 16-17.

251 Id. at 16-20.

252 Id. at 19-20.

permitted to blur the long-established separation between proprietary calling cards and the 0+ dialing method.[253]

67. MCI claims that the Commission's Phase I Order failed to address AT&T's "anticompetitive and discriminatory" behavior in connection with AT&T's CIID card.[254] MCI contends that although the Commission recognizes that AT&T's behavior was improper, the Commission's Phase I Order allows AT&T to benefit from an unfair competitive advantage in the OSP market.[255] MCI further contends that the Commission inappropriately dismissed the issue of allowing LECs to validate its CIID card, but not OSPs, and thus, ignored further evidence of AT&T anticompetitive behavior.[256] MCI claims that the Commission is incorrect in stating an uncertainty regarding whether the 0+ public domain alternative would substantially aid OSP competition for presubscribed locations.[257] Indeed, MCI contends that a competitive benefit would exist if AT&T no longer issued a 0+ card or if AT&T issued a 0+ card and opened its database.[258]

68. Value-Added Communications (VAC) contends that the Commission's Phase I Order is in derogation of past Commission precedent and the public interest.[259] VAC argues that the issuance of AT&T's proprietary CIID card represents an attempt by AT&T to re-monopolize the OSP industry.[260] VAC urges the Commission to subject CIID cards to validation sharing requirements because, as VAC argues, "AT&T's status as a dominant carrier makes it unlawful for AT&T to provide validation functions for intraLATA usage of its cards" to some but not all competing OSPs.[261] PhoneTel Technologies, Inc. (PhoneTel) also asks the Commission to require the opening of AT&T's database, contending that AT&T chooses to allow certain companies access to its database, while denying others access, and thus concludes that the CIID cards are not truly proprietary.[262] PhoneTel contends that AT&T's establishment of "voluntary relationships

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253 CompTel Reply to Comments, filed March 29, 1993, at 5.

254 MCI Petition at 1-3.

255 Id. at 3.

256 Id.

257 Id. at 4-5.

258 Id. at 5.

259 VAC Petition at 1.

260 Id.

261 Id. at 4-5.

262 PhoneTel Petition at 3-4.

with its former partners" is further evidence that AT&T's CIID card is not truly proprietary.[263] PhoneTel argues the CIID card is not proprietary because "use of a CIID card neither ensures the cardholder AT&T service nor AT&T rates."[264] LDDS Communications, Inc. (LDDS) concurs in this conclusion, stating that AT&T's calling card may be validated by virtually any company that jointly provided long distance telephone service with AT&T prior to divestiture.[265] LDDS contends that "since the entire pre-divestiture long distance telephone 'partnership' has access to that data base, the cards are not proprietary cards; they are 'integrated monopoly' cards."[266] LDDS further argues that under prior Commission decisions, "once AT&T held out the availability of access to its CIID card data base to some carriers, it became obligated as a common carrier to make that access available on a nondiscriminatory basis to all carriers.[267]

69. The petitioners also present arguments against the Commission's consumer education mandate. LDDS argues that the Phase I Order remedy allows AT&T to continue to benefit from the very conduct which gave rise to the Commission's competitive concerns, and consumers as well as competitors will continue to suffer the adverse consequences of that conduct.[268] APCC argues that by requiring AT&T to "cease discriminatory validation," AT&T would then have the option of preserving its cards as true proprietary cards which cannot be validated by any other carrier.[269] Thus, APCC argues, AT&T cards are placed "on the same footing as other IXC proprietary cards."[270] MCI, in addition to CompTel, and LDDS, argues that the Commission's proposed customer education solution will "do nothing to reduce AT&T's dominant position" in the OSP industry because of AT&T's ability to offer a 0+ card, and will fail to end consumer confusion and frustration.[271] LDDS argues that there is no basis to support the Commission's conclusion in this proceeding that customer education will be sufficient to change twenty-five million CIID card holders' dialing practices.[272] PhoneTel urges the Commission to modify its customer education requirement by directing AT&T to recall all CIID

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263 PhoneTel Reply to Opp. to Petition at 4.

264 Id.

265 LDDS Petition at 5.

266 Id.

267 LDDS Reply to Opp. to Petition at 3.

268 See, e.g., LDDS Petition at 3.

269 APCC Reply to Opp. Petition at 2-3.

270 Id.

271 CompTel Petition at 7; LDDS Petition at 2; MCI Petition at 7.

272 LDDS Petition at 15.

cards and issue replacement cards with correct dialing instructions.[273] SWBT argues that, unless modified, the Commission's present instructions will require customers to dial calls with access codes and without "the convenient use of 0+".[274] SWBT further contends that the Commission's instructions to AT&T will "create confusion for customers who receive conflicting information from SWBT service personnel in response to questions about use of AT&T cards on SWBT's network."[275] SWBT recommends that the Commission, in reconsideration of its Phase I Order, order AT&T to inform customers that calls can be completed on a 0+ basis when they hear the announcement of AT&T or a LEC.[276] SWBT and Intellicall contend that informing customers that 0+ dialing is readily available will reduce confusion and inconvenience because customers may dial 0+ and complete the call over the LEC's network.[277]

Opposition to Reconsideration of the 1992 Phase I Order

70. AT&T argues that none of the OSPs offers any new facts or presents any valid reason why the Commission should now reverse its course and impose the costs of the 0+ public domain proposal upon millions of consumers.[278] AT&T contends that the Phase I Order's remedies are supported by the record.[279] AT&T disputes CompTel's claims that 0+ dialing is inconsistent with proprietary cards.[280] AT&T further argues that, unlike the LECs who have independent non-discrimination obligations to all IXCs because they provide monopoly access service, AT&T owes no such obligations to its OSP competitors. In reply to the OSPs' petitions, AT&T points to CompTel's statement that "industry experience shows that with accurate and understandable dialing instructions, customers have little problem using access codes and proprietary cards."[281] AT&T argues that the adoption of the 0+ public domain concept purely for the sake of "increasing parity in the operator services market," is not consistent with the role of

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273 PhoneTel Petition at 8-9; see also LDDS Petition at 15-16 regarding recall of AT&T Calling Cards.

274 SWBT Reply to Opp. Petition at 3-4.

275 Id. at 4.

276 SWBT Petition at 4.

277 Id. at 3-4; Intellicall Petition at 3-4. (Although Intellicall agrees with SWBT's description, Intellicall urges the Commission to deny SWBT's Petition. See Intellicall Comments at 8.)

278 AT&T Opp. Petition at 3; AT&T Reply in Opp. to Petition at 2.

279 AT&T Opp. Petition at 3-4.

280 Id. at 4.

281 AT&T Opp. Petition at 6, citing CompTel Petition at 19.

the Commission, and in all events, would "simply handicap AT&T for the sake of its competitors."[282]

71. AT&T further disputes PhoneTel and LDDS' arguments that AT&T should make its validation database accessible to OSP competitors, arguing that the defining attribute of all proprietary assets, including AT&T's proprietary card validation system, is the owner's right to control the use of those assets. Thus, AT&T argues, the proprietary nature of AT&T's card validation system is not affected by the voluntary relationships AT&T has established for the use of that system.[283] AT&T notes that the issues raised by SWBT relate solely to competition for intrastate calls and the potential impact of AT&T's marketing messages on the LECs.[284] AT&T contends that these issues were ruled beyond the scope of this proceeding and, with respect to the intrastate competition issues, were beyond the scope of the Commission's jurisdiction.[285]

72. Sprint, opposes reconsideration of the Phase I Order, in part, because it believes that BPP is the optimal solution to the imbalances that exist in the OSP market.[286] SWBT expresses its agreement with Sprint on this point, arguing that the technology required for implementation of 0+ public domain is not yet available, as 0+ public domain requires signaling technology which is a component required for implementation of BPP, and as such, is not expected to be available before the other required technology components needed for BPP are also available.[287] SWBT argues that 0+ public domain would require specially designed Signaling System Seven (SS7) technology between LEC end-offices and IXC operator services switches for processing of operator services calls.[288] Such signaling would be necessary so that IXCs could know how the customer dialed the call (i.e., 0+ vs. access code).[289] SWBT contends that unless this intelligence was passed to the IXCs, all 0+ interLATA calls would have to be blocked at the end office, which, SWBT asserts is not in anyone's interest.[290]

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282 Id. at 8.

283 Id. at 11-12.

284 Id. at 13-14.

285 Id. at 14.

286 Sprint Opposition, filed March 19, 1993, at 2.

287 SWBT Comments, filed March 10, 1993, at 2-3.

288 Id. at 2-3.

289 Id.

290 Id.

73. Sprint also opposes reconsideration of the Phase I Order because certain OSPs define 0+ public domain so broadly as to affect practices of other carriers, including Sprint, which Sprint contends are not part of the problem with CIID card use.[291] Sprint argues that the current technology does not allow proprietary calling card issuers to block the use of 0+ without also blocking the access code.[292] Sprint further contends that the effect of a broadly defined "0+ public domain" proposal would require Sprint and other IXCs to abandon 10XXX as an access method for calling card calls.[293] Sprint argues that it, and other similarly situated IXCs, should not be forced to bear the brunt of solving "a problem that is of AT&T's making".[294]

F. COMMENTS ON 0+ CALLS BY PRISON INMATES

74. In addressing the issue of BPP for inmate-only telephones, C.U.R.E. notes that for over three years it has urged the Commission to adopt a BPP scheme for inmate calling.[295] C.U.R.E. expressed its continuing support for BPP as the best available means of promoting lower rates and improved services for families and friends of inmates and acknowledged the Commission's indication that BPP would be given further consideration in relation to the implementation of number portability. C.U.R.E. urged the Commission to implement mandatory, self-executing rate-caps and other operational measures as interim alternatives to BPP.[296]

75. The Florida Commission states that requiring full price disclosure to the called party before the call is completed would not be an effective way to prohibit unreasonable rates on collect calls placed by prison inmates because the called party cannot choose another carrier to complete the call.[297] Instead, the Florida Commission supports imposition of an absolute rate cap on such calls, as it does on OSP rates.[298] The Florida Commission notes that inmates' families and legal counsel can be protected from excessive charges if inmates may place calls to personal 800 numbers.[299] As it explains, the use of 800 numbers allows the called party to:

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291 Sprint Opposition, filed March 19, 1993, at 2.

292 Id. at 2-3.

293 Id.

294 Id.

295 C.U.R.E. Comments at 2.

296 Id. at 3; C.U.R.E. Reply Comments at 2.

297 Florida Commission Comments at 10.

298 Id.

299 Id. at 10-11.

> use whatever IXC he prefers and . . . retain control of the rates he is billed. The correctional facility can still retain control over the numbers the inmate calls as it has the ability, through [customer-premises equipment], to prohibit calls to all but previously authorized numbers, blocking all other numbers so that the inmate cannot dial around.[300]

Similarly, prisons could allow inmates to use debit cards that they purchased, or their families purchased on their behalf, and screen access numbers inmates would use to place a call before allowing them to use such cards.[301] The Florida Commission recognizes that administration of such a system might be a burden on prisons that currently rely on providers of operator services to maintain fraud control systems "in return for an outbound calling monopoly" and also could result in reduced "commission payments" to such prisons.[302] It believes, however, that because customer-premises equipment (CPE) solutions to control fraud in prisons are now readily available, "it is appropriate to review the justification for restricting all inmate outbound calls to a single provider."[303]

76. The Coalition proposes that any inmate calling services provider charging in excess of FCC-benchmark rates for inmate calls be subject to dominant carrier tariff filing procedures, including the requirement that it cost-justify its rates.[304] The Coalition further proposes that any such carrier should also be required to file individual tariffs for every facility where it charged rates over the FCC-benchmark for inmate calls (except interstate calls from states that have capped intrastate rates below "compensatory levels").[305] The Coalition urges the Commission to require quotes on-demand rather than as a mandatory rate disclosure to maximize the utility of rate information.[306] The Coalition contends that disclosure notices should apply to called parties, because it argues, "[a] price disclosure message will also trigger called parties to investigate what they believe to be excessive rates."[307] The Coalition argues that, especially in the

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300 Id.

301 Id. at 11.

302 Id.

303 Id.

304 Coalition Comments at 11.

305 Coalition Reply Comments at 8. As previously noted (supra n.22), the Commission subsequently determined that the statutory forbearance criteria in Section 10 of the Communications Act had been met for it to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services.

306 Coalition Comments, filed November 13, 1996, at 4-5.

307 Coalition Comments at 12.

case of inmates, who, "repeatedly call the same small circle of friends and family", a mandatory price rate quote could have a "numbing effect on consumers."[308] C.U.R.E. believes that, to ensure that ratepayers and their representatives are able to monitor inmate provider billing rates, the Commission should require inmate service providers to: file informational tariffs with the FCC; make copies available for public inspection in a file maintained on the premises of the correctional facility to whom the provider offers service; and provide copies to interested parties on request.[309]

77. Both the Federal Bureau of Prisons and the Office for Victims of Crime, two agencies within the Department of Justice, have expressed concern that BPP in the prison setting might jeopardize the current capability of correctional agencies or prisons to control and monitor inmate telephone use.[310] Because of these concerns, the Attorney General of the United States has urged that BPP not be applied to prison inmate telephones, noting that the capability to control and monitor inmate telephone use "is crucial in maintaining the security of correctional facilities, the safety of the general public, and special protections for victims and witnesses of crime."[311]

78. The Coalition asserts that it would be "a gross mistake" to implement BPP in the inmate calling environment, because it would be tremendously expensive; lead to a marked decrease in the security of confinement facilities; lead to a drastic increase in telephone harassment, fraudulent calling and other criminal activity by inmates; drastically reduce the access of inmates to calling opportunities; and because it could result in an increase in inmate calling rates, rather than "its only possible benefit - a reduction" in such rates.[312] Indeed, the Coalition argues that due to the enormous cost of instituting BPP in the inmate environment, it is likely that the recipients of inmate collect calls would incur that cost, through a BPP charge added to the rates for such calls to pay for BPP implementation.[313] The Coalition asserts that not a single commenter continues to advocate BPP in the inmate environment, and that "even C.U.R.E., which has long been a highly vocal proponent of BPP, concedes that BPP is not currently a viable option."[314] Gateway asserts that inmate service providers face significant security and fraud prevention needs that can only be satisfied through call blocking and restricting inmate services

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308 Coalition Comments, filed November 13, 1996, at 4-5.

309 C.U.R.E. Comments at 8.

310 See letter from Janet Reno, Attorney General of the United States, to Reed E. Hundt, Chairman, Federal Communications Commission, October 31, 1994.

311 Id.

312 Coalition Comments at 7, 14.

313 Id. at 6-7.

314 Coalition Reply Comments at 2.

to collect calls and, accordingly, that the Commission cannot legitimately provide for carrier choice or BPP in the inmate services environment.[315]

79. Gateway believes that targeted Commission enforcement efforts against inmate operator service providers charging excessive rates are preferable, for both policy and legal reasons, to an FCC-mandated rate cap.[316] Gateway recognizes, however, that the only information useful to recipients of inmate calls is rate information provided in real time, prior to acceptance of the call.[317] Accordingly, Gateway asserts that establishing a rebuttable rate ceiling for inmate service rates, at the average inmate service rates of the three leading IXCs, and requiring full rate disclosure, in real time, by inmate service providers is "the best alternative to BPP for the inmate services market."[318] GTE, specifically argues that application of BPP is unnecessary in light of the Commission's acknowledgement in CC Docket No. 94-158 of many commenters' assertions that inmate service rates had been brought under control during the previous five-year period and that the market was highly competitive.[319]

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315 Gateway Comments at 3-4.

316 Id. at 3.

317 Id. at 10.

318 Id. at 3.

319 GTE Comments at 10, referring to Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, 11 FCC Rcd 4532, 4548 (1996). The Commission did not reach any conclusion there regarding the reasonableness of inmate service rates and the competitiveness of those services but determined that the issue of inmate rates should be dealt with in the instant proceeding.

Separate Statement of Commissioner Gloria Tristani

Re: Billed Party Preference for InterLATA 0+ Calls, Second Report and Order and Order on Reconsideration

The Commission continues to receive thousands of complaints every year about high rates charged by Operator Service Providers (OSPs). Today's Order greatly simplifies the way payphone users can learn the OSP's rates for a 0+ call prior to placing the call. I hope that our action today will eliminate the "sticker shock" often experienced by consumers when they use OSPs to place long distance calls.

However, we should be clear about what today's Order does not do -- it does not automatically eliminate high OSP rates. It merely enables payphone users who dial 0+ for a long distance call to know the rate before making the call. If the rate quoted is too high, the caller can choose not to make the call using 0+ dialing.

Unfortunately, operator services from payphones are a rare example of competition leading to higher prices for consumers. When more OSPs compete for the right to serve a particular location, they must pay higher commissions to the location owner. OSPs often recover those higher commissions from consumers in the form of higher calling charges.

For that reason, we will continue to monitor OSP rates through tariff filings and through the complaint process. If the "bad actor" OSPs continue to generate a significant volume of complaints at the Commission, I would support more direct action to protect payphone users, such as capping the rates that OSPs can charge.

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